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NOTICE OF ALLOWANCE AND FEE(S) DUE

60460

7590

03/30/2009

MARGER JOHNSON & MCCOLLOM/INDIVOS
210 SW MORRISON STREET
SUITE 400
PORTLAND, OR 97204

EXAMINER

MALHOTRA, SANJEEV

ART UNIT

PAPER NUMBER

3694

DATE MAILED: 03/30/2009

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/871,241

05/30/2001

Philip D. Lapsley

8514-50

8211

TITLE OF INVENTION: BIOMETRIC FINANCIAL TRANSACTION SYSTEM AND METHOD

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	06/30/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail**

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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

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Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

60460 7590 03/30/2009

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Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,241	05/30/2001	Philip D. Lapsley	8514-50	8211

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nonprovisional	NO	\$1510	\$300	\$0	\$1810	06/30/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
MALHOTRA, SANJEEV	3694	705-035000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/147; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____
- 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)

☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____ Date _____

Typed or printed name _____ Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 1418 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 1418 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability**Application No.**

09/871,241

Applicant(s)

LAPSLEY ET AL.

Examiner

SANJEEV MALHOTRA

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERIT IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 03-09-2009.
2. ☒ The allowed claim(s) is/are 30,31 and 33-38.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

/SM/
19 MARCH 2009

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office Action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid (accounting date = March 10, 2009 per the RAM system), prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's RCE submission filed on March 9, 2009 has been entered.

This Office Action is an allowance in response to the Applicant's remarks filed on March 9th, 2009 for its original application filed on May 30, 2001 and titled: "Biometric Financial Transaction System and Method". Examiner notes that four (4) additional/new IDSs (Information Disclosure Statements) were filed by the Applicant on March 9, 2009, which have been entered.

Examiner's Amendment/ Comment

2. An examiner's amendment/comment to the record appears below and it has been agreed to by the Applicant's attorney of record, Alexander Johnson, Registration No. 29396, on December 15, 2008 and reaffirmed on March 19, 2009 without any objections. Should the changes and/or additions be unacceptable to the Applicant, an

amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Claims 1--29 are hereby cancelled that were 'canceled' by the Applicant per their response and 'Amendments to the Claims' dated October 31st, 2008. The following claims are confirmed as cancelled by the Applicant per their response dated October 31, 2008:

Claims 1--19 (Group I): Cancelled

Claims 20--29 (Group II): Cancelled

After the Examiner's Amendment, amended claims will read as follows:

Claim 30: A method for a triangular transaction involving tokenless biometric authorization of [an electronic] a commercial transaction between a consumer and a merchant sequentially using an electronic identicator and an access device wherein the access device is not required to contain in memory any data that is personalized to the consumer, the access device including means for taking a biometric sample from the consumer's person and the electronic identicator comprising at least one computer further comprising at least one database wherein the consumer has registered at least one registration biometric sample taken from the consumer's person, the method comprising:

a first communications step, wherein the consumer and merchant establish communications with each other via an access device capable of biometric input;

a proposal step, wherein a commercial transaction is proposed between the merchant and the consumer via the access device;

a transaction forwarding step, wherein the merchant forwards information regarding the commercial transaction to the electronic identicator;

a first access device identification step, wherein the access device communicates to the merchant an identification code associated with the access device;

a second communications step, wherein after the consumer and merchant have agreed on the proposed commercial transaction, the consumer and the electronic identifier use the access device to establish communications with each other;

an identification code forwarding step, wherein the merchant communicates to the electronic identifier the identification code associated with the access device that was previously communicated to the merchant;

a second access device identification step, wherein the access device communicates to the electronic identifier the identification code associated with the access device and a bid biometric sample taken from the consumer's person;

a consumer identification step, wherein the electronic identifier compares the biometric sample with at least one previously registered biometric sample to produce a successful or failed identification of the consumer; [and]

an association step, wherein the identification code associated with the access device is used to associate the biometric identification accomplished in the consumer identification step with the information regarding the commercial transaction;

an information forwarding step, wherein, upon successful identification of the consumer, the electronic identifier electronically forwards information regarding the consumer to the merchant; and

a financial transaction authorization step, wherein the electronic identifier executes a financial transaction on behalf of the merchant;

wherein, upon successful identification of the consumer, a biometrically authorized electronic financial transaction is enabled between the consumer and the merchant.

Claim 32: Cancelled

Claim 38: The method of claim 30 [32] wherein the transaction forwarding step uses a communication method selected from the set comprising: a dedicated communication line, a dial-up communication line, packet switching.

Claims 31--37: Remain "as-is" (and as stated in the applicant's submission of September 9, 2008.)

Allowable Subject Matter

3. Claims 30--31 and 33-38 are pending and allowed. The following is an examiner's statement of reasons for allowance:

The closest prior art of record is Patent No. 5,943,423 issued on August 24, 1999 to Saed Muftic and titled: "Smart Token System for Secure Electronic Transaction and Identification" (hereinafter "Muftic"). Another prior art of record is US Patent No. 5,876,926 issued on March 2, 1999 to James E. Beecham and titled: "Method, Apparatus and System for Verification of Human Medical Data" (hereinafter "Beecham").

Muftic teaches about the use of smart token technology by using a smart card, PCMCIA card or any other medium containing storage or processing capability is used to facilitate a variety of secure business transactions, including those which might occur over an unsecured network such as the Internet. Application programs can obtain a variety of smart token services using a common application programming interface. Applications of the smart token technology to electronic cash, banking, credit, computer

and network access, software distribution, medical handling and issuance of credentials are presented.

Beecham teaches about the use of biometric samples as a method and apparatus for collecting medical data from a test subject while optionally preserving anonymity for the test subject. The method includes steps of collecting a sample from the test subject and taking biometric data from the test subject. The biometric data permit a high order of probability of correlation of the test subject with the sample and with test results derived from the sample. The method optionally further includes a step of providing the test subject with a unique correlating code also for permitting unique correlation of the test subject with the sample and with test results derived from the sample, and further desirably includes a step of labeling the sample with information including the biometric data.

4. Applicant claims that its claimed invention in the instant application --- is an improvement over Pare and Hoffman (two references that were used earlier), and it is "specifically applicable to using a consumer access device such as a cell phone, telephone, personal digital assistant or the like to carry out transactions with a merchant. A transaction can be initiated and agreed to between the consumer and merchant without input of a consumer biometric into a merchant device. The consumer's access device ID code is sent to the merchant, and also it is sent to the identifier. The merchant need never receive the consumer's biometric sample. When

the biometric is input, it is input to the identifier without having to pass through the merchant's terminal. This is, in essence, a triangular transaction, as shown in all of the drawing figures."

Additionally, the applicant claims that its method consists of "a transaction that is proposed between the merchant and the consumer via an access device. The access device communicates to the merchant an ID code associated with the access device. After the merchant and consumer have agreed on the transaction, the consumer and identifier establish communications with one another. Then the access device communicates the ID code to the electronic identifier. The identifier then compares a bid biometric sample from the consumer via the access device to a previously registered biometric sample to try to identify the consumer. Upon successful identification of the consumer, information is sent from the identifier to complete the transaction."

Applicant claims that neither Mufic nor Beecham teach or suggest a method in which there are two access device identification steps of the claimed invention---one to the merchant, the second to the identifier. Nor do Mufic and Beecham teach or suggest a method in which the access device transmits the consumer's bid biometric sample from the access device to the identifier after the transaction is agreed to. This is because of the unique three corners or nodes of this triangular transaction are --- the Merchant, the Identifier, and the User Access Device, with three communications channels connecting these three nodes; and this triangular relationship is now clearly set forth in the claims after all the amendments to the claims.

Any comments considered necessary by the applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled, "Comments on Statement of Reasons for Allowance".

Conclusion

6. Applicant's arguments of September 9, 2008 are considered moot based on all of the amendments to claims submitted by the Applicant so far, its response to election/restriction filed on October 31, 2008, and the RCE request of March 9, 2009.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sanjeev Malhotra whose telephone number is 571-272-7292. The examiner can normally be reached on Flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell, can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SM/

19 March, 2009

/James P Trammell/

Supervisory Patent Examiner, Art Unit 3694